

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSE A. VARELA)	
Claimant,)	
vs.)	
)	
IBP, INC.)	Docket No. 135,367
Respondent,)	
and)	
)	
SELF-INSURED,)	
Insurance Carrier.)	

ORDER

ON the 7th day of July, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Thomas F. Richardson on May 4, 1994, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through his attorney, Robert A. Levy of Garden City, Kansas. The respondent, a qualified self-insured, appeared by and through its attorney, Paula S. Greathouse of Emporia, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge as specifically set forth in the Award dated May 4, 1994.

STIPULATIONS

The stipulations set forth by the Administrative Law Judge in his Award dated May 4, 1994, are hereby adopted by the Appeals Board for purposes of this order.

ISSUES

Although other issues were decided by the Administrative Law Judge, the sole issue present on appeal is whether the claimant is entitled to temporary total disability from July 18, 1988 through October 15, 1988.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant injured his left ring finger on July 16, 1988 when a piece of meat containing a bone pinched or struck his left hand as he was cutting meat in his employment at respondent's beef packing plant. After treatment at St. Catherine's emergency room, claimant attempted to return to work the same day. Respondent would not, however, permit him to return, indicating the injury would prevent claimant from performing his duties. The record does not indicate how long claimant was off work. At the regular hearing claimant's attorney stipulated that claimant was not requesting any temporary total disability benefits. The case was then tried and claimant attorney did not, at anytime, ask to withdraw this stipulation. In his submittal brief, however, after terminal dates had expired, claimant did request that temporary total benefits be awarded. The Administrative Law Judge denied temporary total benefits, citing the stipulation that no claim was being made for temporary total disability benefits and the lack of evidence relating to the dates of temporary total disability.

K.A.R. 51-3-8 indicates that permission to withdraw admissions or stipulations shall be decided by the Administrative Law Judge depending on the circumstances in each instance. By implication, that administrative regulation requires an application to be made by the party wishing to withdraw the admissions or stipulations. Had the claimant sought to withdraw his stipulation regarding temporary total disability prior to conclusion of the evidence in this case, the Administrative Law Judge would have been within his discretion to allow such a withdrawal. However, no such request was made. In addition, there is no evidence as to the exact amount of time off work due to the work related injury. The decision of the Administrative Law Judge is, therefore, affirmed.

AWARD

WHEREFORE, AN AWARD OF COMPENSATION IS ENTERED in accordance with the above findings in favor of the claimant, Jose A. Varela and against the respondent, IBP, Inc., qualified self-insured, for an accidental injury occurring on July 16, 1988.

The claimant is entitled to five weeks permanent partial disability at the rate of \$259.65 per week for a twenty-five percent (25%) loss of use to the left 3rd (ring) finger, making a total award of \$1,298.25.

The claimant is awarded hospital and medical expenses in the sum of \$3,385.55.

The claimant is awarded unauthorized medical expenses in the sum of \$265.52.

Claimant's contract of employment with his attorney is approved subject to the provisions of K.S.A. 44-536.

Fees and expenses of administration of the Kansas Workers Compensation Act are assessed against the Respondent to be paid direct as follows:

Underwood & Shane
Transcript of proceedings

\$ 43.40

JOSE A. VARELA

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DOCKET NO. 135,367

Deposition of Jose Varela	227.00
Deposition of Pam Moreno	196.50
Deposition of Steve James	293.00
Deposition of Evangelene Mendoza	93.00
Deposition of Kerri Sperry	141.50

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

cc: Robert A. Levy, Garden City, Kansas 67846
Paula Greathouse, Emporia, KS 66801
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director